

**PROGRAMMATIC SAFE HARBOR AGREEMENT FOR NENE ON THE
ISLAND OF MOLOKAI, HAWAII**



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This Safe Harbor Agreement ("Agreement") is made and entered into as of the _____ day of _____, 20____, by and among the **U.S. Department of the Interior, Fish and Wildlife Service** (Service); the **State of Hawaii, Department of Land and Natural Resources** (DLNR), by its Board of Land and Natural Resources; and the **Department of Land and Natural Resources, Division of Forestry and Wildlife** (DOFAW); hereinafter collectively called the "Parties." This Agreement will serve as a programmatic safe harbor agreement under which individual landowners ("Cooperators") will be enrolled through Cooperative Agreements. This Agreement follows the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) and Hawaii Revised Statutes (HRS) §195D-22.

1. INTRODUCTION

The Safe Harbor program encourages proactive management to benefit endangered and threatened species by providing regulatory assurances that future property-use restrictions will not be imposed if those efforts attract endangered or threatened species to their enrolled property or result in increased numbers or distributions of listed species already present. This Agreement is a cooperative government/private effort to achieve biological goals for the covered species that are unlikely to occur on the enrolled property in the foreseeable future without such an Agreement. The Parties also intend the Agreement to demonstrate that conservation of endangered and threatened species is compatible with current land-use practices.

The primary objective of this Agreement is to encourage landowners to provide some protection for nene or Hawaiian goose (*Branta sandvicensis*) that may occupy or breed on their property following the reintroduction of nene to Molokai in 2001 through the "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai." The biological goal of this Agreement is to aid and support the restoration of nene to the Island of Molokai. Under this programmatic Agreement, Cooperators will make habitat available to nene and will assist with predator control for nene for over a period of 30 years.

When signed, this Agreement will serve as the basis for the Service and DLNR to issue permits under ESA section 10(a)(1)(A) (Federal permit) and HRS §195D-22 (State permit) to DOFAW that allow the incidental take of nene. This Agreement will authorize DOFAW to enroll landowners (Cooperators) with Certificates of Inclusion under the Federal permit and State permit when Cooperators sign individual Cooperative Agreements that describe actions that will be taken to benefit nene. Thus, the Cooperators will be authorized to take nene that have increased above the baseline established in this Agreement and Cooperative Agreements as a result of the Cooperators' voluntary conservation activities. Although the Agreement and permits will authorize incidental take of nene associated with returning the enrolled property to its agreed-upon baseline condition, the Parties anticipate that this level of take will never be realized.

Incidental take is defined as take that is incidental to, and not the purpose of, otherwise lawful activities and does not include shooting, capture or other direct take of animals or plants.

Certificate of Inclusion issuance will not preclude the need for the Cooperator to abide by all other applicable Federal, State, and local laws and regulations that may apply.

2. COVERED SPECIES

2.1. COVERED SPECIES. This agreement covers nene, Hawaiian goose, (*Branta sandvicensis*), a listed endangered species, hereafter referred to as “nene” or “covered species.”

SPECIES DESCRIPTION. The nene or Hawaiian goose (*Branta sandvicensis*) is a medium-sized goose that is closely related to the Canada goose (*Branta canadensis*) (Quinn *et al.* 1991). It is the only remaining native resident goose in the Hawaiian Islands (Olson and James 1991). The plumage of both sexes is similar, though it is possible to distinguish between males and females, in part because females are smaller than males (Kear and Berger 1980). This endemic goose is the state bird of Hawaii.

SPECIES DISTRIBUTION. Fossil evidence indicates that before and during Polynesian colonization (around 1,600 years ago), nene occurred on all of the main Hawaiian Islands, with the exceptions of Oahu and possibly Niihau (Kirch 1985, Olson and James 1991). The species subsequently declined such that, at the time of the arrival of Europeans in 1778, nene were known with certainty only from the Island of Hawaii (Baldwin 1945, Henshaw 1902, Wilson and Evans 1893). A decline on the Island of Hawaii was noted in the early 1800s as birds were extirpated from lowland habitats (Baldwin 1945, Fisher *et al.* 1969) and by 1952, the wild population was estimated to be 30 birds (Smith 1952).

At present, conservation efforts have succeeded in establishing populations of nene on the islands of Hawaii, Kauai, and Maui with an estimated statewide population of 1,025 to 1,080. In addition, 11 captive-bred nene were released on December 21, 2001, on the Island of Molokai at Puu O Hoku Ranch.

THREATS TO THE SPECIES. The nene was listed as a federally endangered species in 1967 (32 FR 4001) and is considered one of the most endangered goose species in the world (Black 1998). A nene restoration program was initiated in 1949 and captive-bred birds have been released into the wild since 1960 (Kear and Berger 1980, USFWS 1999). The Zoological Society of San Diego currently manages the nene captive propagation program in Hawaii. Populations of nene on all the islands are partly maintained through releases of captive-bred birds (Black and Banko 1994).

Human activity has impacted nene since settlers first landed on the Hawaiian Islands. Hunting probably caused a substantial decline of birds in lowland habitats (Baldwin 1945, Banko and Elder 1990, Henshaw 1902, Wilson and Evans 1893), extensive burning and agricultural activities changed habitat conditions for nene, introduced plants and non-native ungulates altered and often degraded habitats, and introduced mammalian predators (mongooses, dogs, cats, rats, and pigs) preyed on nene, their eggs or goslings. These activities also had indirect effects including driving nene to marginal upland areas and changing migration patterns, flocking behaviors, and utilization of food items. Currently, the primary threats to nene are predation by introduced predators, lack of lowland habitats, and degraded habitat.

HABITAT TYPES. Nene utilize a variety of habitats from sea level to 8,000 feet including

coastal dunes, non-native grasslands (such as golf courses, pastures and rural areas), sparsely vegetated low and high elevation lava flows, cinder deserts, alpine grasslands and shrublands, open native and non-native alpine shrubland-woodland community interfaces, and mid-elevation native and non-native shrublands (USFWS 1999). The current distribution of nene has been highly influenced by the locations of release sites for captive-bred nene (Banko 1988, Banko *et al.* 1999).

BREEDING HABITAT. Prehistorically, it appears that nene nested primarily in leeward lowland habitats (under 700 meters) during the rainy season when winter rains caused new growth of food plants; it is thought that the warmer low elevation areas improved nesting success and gosling survival (Baldwin 1947, Banko 1988, Henshaw 1902, Munro 1944, Perkins 1903).

Nesting typically occurs between October and March although eggs have been laid from August to April (USFWS 1999). Nene nests are constructed on the ground and are typically a shallow scrape, lined with a variety of plant material and feather down, and well-hidden under vegetation. The presence of open or flowing water is not necessary for successful breeding, although nene will readily utilize water when available (USFWS 1999).

DIET. Nene are browsing grazers and forage on a variety of over 50 native and introduced plants. The majority of food items nene graze on are fruits, leaves and seeds of grasses and sedges, and leaves and flowers of various herbaceous composites (Baldwin 1947, Black *et al.* 1994, USFWS 1999). Nene are opportunistic in their choice of food plants and the composition of their diet depends largely on the composition of the vegetation in the habitat and since most habitats in Hawaii are highly altered, there is a high proportion of non-native foods in their diet (Black *et al.* 1994, USFWS 1999).

MOLOKAI CONSERVATION STRATEGY. Since 1993, one approach of nene recovery in Hawaii has been to establish predator-resistant breeding/release pens in habitat where there is sufficient food and ongoing predator control efforts. The pens are used for initial releases of goslings and are available in subsequent years as predator-protected areas for future generations to raise young. The “Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai” was signed in September 2001 and provides for the establishment of a population of around 75 nene on Puu O Hoku Ranch through the use of such breeding/release pens. Puu O Hoku Ranch is located at the eastern tip of Molokai (Attachment 1). Once reintroduced nene fledge from release pens on Puu O Hoku Ranch they will be able to fly anywhere on the island of Molokai. Some or all of these nene or their descendants may use lands outside of Puu O Hoku Ranch for foraging and breeding. The purpose of this Agreement is to provide some level of monitoring and management for nene that choose to leave Puu O Hoku Ranch and to encourage voluntary nene habitat maintenance by landowners, or Cooperators, who enroll under this Agreement. This Agreement will increase the amount of habitat available to nene and the ability of the Service and DOFAW to monitor nene while giving assurances to Cooperators that future uses of their property will not be restricted by the presence of nene.

2.2. IMPORTANCE OF PRIVATE LANDS. Unlike endangered forest birds in Hawaii, nene routinely use open non-forested areas at both low and high elevations that are privately owned. The majority of lands on Molokai are privately owned or owned by Hawaiian HomeLands. A

major step in the restoration of nene on Molokai therefore, is to encourage the presence of nene on private lands. The "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, island of Molokai" sets a goal of restoring 200 nene to the Island of Molokai, however all of these birds cannot be supported on Puu O Hoku Ranch. By including additional properties on Molokai under safe harbor agreements nene are much more likely to establish a large population on the island, thus improving the chances of the species' statewide recovery. There is a reasonable likelihood that nene, first established on Puu O Hoku Ranch, may subsequently occupy any or all of the properties enrolled under this Agreement.

3. DESCRIPTION OF ENROLLED PROPERTY

The enrolled property is the area over which Safe Harbor assurances apply and on which incidental take of the covered species is authorized. The Parties reasonably expect the covered species may occupy all or a portion of the enrolled property as a result of management actions undertaken through this Agreement. The Island of Molokai, at 170,910 acres, supports a diversity of habitats some of which may be suitable for nene (Attachment 2). This Agreement may include any and all private land on the island on Molokai, Hawaii- 2nd Tax Division, Zones 5 and 6 (Attachment 1). However, the Agreement will focus on those properties that have apparently suitable habitat for nene. Such habitat includes open pasture, shrubland, agricultural lands, areas of mown grass, or wetland. The general distribution of these habitats is shown in Attachment 2. A Cooperative Agreement will be completed and signed by DOFAW and the landowner for each property to be enrolled. Each Cooperative Agreement will include a map of the property, its tax map key, the portion of the property to be enrolled and its acreage, and a description of the habitat types found on the portion of the property to be enrolled. In addition, current land-use practices and existing development, and expected land-use changes and development will be described.

4. BASELINE DESCRIPTION FOR NENE

The baseline for each landowner signing a Cooperative Agreement is the number of nene on the property and, at the discretion of the landowner, the amount of occupied, suitable habitat. Each Cooperative Agreement will specify the baseline for the particular property covered under that Cooperative Agreement. The format for a Cooperative Agreement is shown in Attachment 3. Until such a time as the first nene is suspected to have dispersed from Puu O Hoku Ranch and/or nene are known to be resident on another property on Molokai the baseline for each property signing a Cooperative Agreement will be zero.

After nene are suspected to have dispersed from Puu O Hoku Ranch and/or nene are known to be resident on another property on Molokai it is possible that non-zero baselines will exist. Baseline will be determined using the guidelines below:

4.1. PROPERTIES OF <100 ACRES. a) zero baseline: If the landowner has not seen nene on his/her property, no nene are known from adjacent properties, and representatives of DOFAW and the Service concur that nene are unlikely to be occupying the property at the present time, then the baseline will be set at zero for that enrolled property.

b) non-zero baseline: If the landowner has seen nene on his/her property or the agencies reasonably expect nene might be present, DOFAW, with the assistance of the Service as needed, will conduct surveys to determine the baseline for nene. The exact number and protocol for

surveys will be determined based on the size of the property and other variables, but at least two surveys will be conducted. Surveys will occur from dawn to dusk, possibly over multiple days, and will be carried out in the non-breeding season between July and September (when nene are most likely to be in flocks). The number of nene a landowner has observed and the number of nene seen by DOFAW or Service personnel will be used to calculate a numerical baseline for that property and will be recorded in the Cooperative Agreement. In addition, the Cooperative Agreement may specify a baseline of occupied habitat. Such a baseline will use information from the surveys above and will be calculated as the number of acres the baseline nene are reasonably likely to be using for foraging and/or nesting habitat.

4.2. PROPERTIES OF > 100 ACRES. a) zero baseline: If the landowner has not seen nene on his/her property, no nene are known from adjacent properties, and representatives of DOFAW and the Service concur that nene are unlikely to be occupying the property at the present time, then the baseline will be set at zero for that enrolled property.

b) non-zero baseline: If the landowner has seen nene on his/her property or the agencies reasonably expect nene might be present, DOFAW, with the assistance of the Service as needed, will conduct surveys to determine the baseline for nene. Conducting baseline surveys on large pieces of land typically requires more time and effort, especially when there is variability in the landscape and vegetation. The exact number and protocol for surveys will be determined based on the size of the property and other variables. Surveys will occur from dawn to dusk and will be carried out in the non-breeding season. The number of nene a landowner has observed and the number of nene seen by DOFAW or Service personnel will be used to calculate a numerical baseline for that property and will be recorded in the Cooperative Agreement. In addition, the Cooperative Agreement may specify a baseline of occupied habitat. Such a baseline will use information from the surveys above and will be calculated as the number of acres the baseline nene are reasonably likely to be using for foraging and nesting habitat.

5. CONSERVATION MEASURES AND RESPONSIBILITIES OF THE PARTIES

5.1 CONSERVATION MEASURES FOR COVERED SPECIES. The primary objective of this Agreement is to aid in the restoration of a population of nene on Molokai that is self-sustaining. In order to accomplish this, it is essential that private landowners, the Service, and DOFAW work together to provide good habitat and positive stewardship for nene. Management activities that are undertaken through Cooperative Agreements will result in additional habitat being available to the nene of Puu O Hoku Ranch, should nene choose to leave Puu O Hoku Ranch. Until such a time as a Cooperator or DOFAW discovers or expects that nene occur on a property the Cooperator will have no responsibilities under this Agreement except to report the absence of nene to DOFAW on an annual basis.

If a Cooperator discovers nene on his/her property or believes nene to be present, the landowner will inform DOFAW of the nene's presence within a reasonable amount of time. The Cooperator will also allow DOFAW, possibly with the assistance of the Service, to access the property to survey nene. DOFAW, in consultation with the Service, may choose, under certain circumstances, to relocate eggs, goslings, or adults to other portions of the property or to remove them from the property. Predator control will be carried out in areas where the nene are nesting and will be conducted by the landowner and/or DOFAW as specified in the Cooperative Agreement. The net effect of these management activities will be to increase the likelihood that

nene on Molokai will survive and breed successfully. Specific management actions that will be implemented once nene colonize a Cooperator's property are detailed on the draft Cooperative Agreement (Attachment 3) as described under Section 4.2. Responsibility of Parties.

Nothing in this Agreement prevents the Cooperator from implementing land management activities not described in the Agreement, as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. As long as the Cooperator implements the agreed upon conservation measures the Cooperator may develop, farm, ranch, harvest timber, or make any other lawful use of the enrolled property, even if loss of nene or occupied habitat above the established baseline levels occurs.

Emergency situations arising from natural disasters (e.g., hurricanes, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of certain land management actions that may result in take of nene. The Cooperator will notify DOFAW and make reasonable accommodations for survey and/or relocation of nene, possibly with the assistance of the Service, prior to initiation of the land management action(s) in such an event. If prior notification is not possible, the Cooperator will take into account known locations of nene, especially nests, and avoid impacts to the maximum extent possible during his/her emergency actions. The Cooperator will notify DOFAW within 10 working days of taking such action, including the measures taken to avoid impacts to nene.

5.2. RESPONSIBILITIES OF THE PARTIES. The responsibilities of the Cooperators will be detailed on each Cooperative Agreement, but at a minimum will include all of the responsibilities detailed on the draft Cooperative Agreement (Attachment 3). In addition to the outlined responsibilities, the parties agree to work cooperatively on other issues as necessary to further the purposes of this Agreement. Moreover, nothing in this Agreement shall limit the ability of the Federal and State conservation authorities to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

Specific responsibilities of Parties to this Agreement are as follows:

5.2.1 DLNR Shall:

- a. Upon execution of this Agreement and satisfaction of all other applicable legal requirements, issue a permit to DOFAW in accordance with HRS §195D-22 authorizing incidental take of nene as a result of lawful activities on properties that may be enrolled under this Agreement. The term of the permit will be 50 years except as otherwise provided by this Agreement.

5.2.2. DOFAW Shall:

- a. Hold Federal and State permits and enroll landowners who express interest in the program and who have potentially suitable nene habitat on their land. DOFAW will develop Cooperative Agreements with such landowners, will process and sign Cooperative Agreements, and will issue Certificates of Inclusion under the Federal and State permits (Attachment 4) to landowners who sign Cooperative Agreements.
- b. Provide copies of the draft Cooperative Agreements and their associated conservation measures or habitat management plans to the Service for an opportunity to review and provide comments on proposed management activities prior to forwarding the draft to the

Cooperator. DOFAW will provide the Service with copies of finalized Cooperative Agreements and Certificates of Inclusion upon execution.

- c. Meet with Cooperators on an annual basis and may visit enrolled properties for the purposes of compiling an annual report (as described in Section 9.1) on actions taken through this Agreement, on the numbers and/or distribution of nene on enrolled lands, and on any take of nene that has occurred on properties enrolled under this Agreement.
- d. Relocate adult nene or nene families that are in unsuitable or unprotected locations.
- e. Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.
- f. Ensure Cooperators are implementing the terms of the Agreement.
- g. Provide and discuss with Cooperators a handout on handling injured nene and nene carcasses (Attachment 5).
- h. Inform the Service of any known nene mortalities or injuries within five working days of receiving notice from a Cooperator of nene mortalities or injuries.
- i. Carry out predator control as required by specific Cooperative Agreements.
- j. Conduct compliance and biological monitoring, as described in Section 9 of this Agreement and provide a complete annual report that describes the findings of such monitoring to the Service.
- k. If warranted, recommend procedures the Cooperators can take to avoid future take based on any take described in past annual reports.
- l. Work with the Service on potential baseline adjustments, new management actions, and adaptive management plans as necessary.
- m. Inform the Service when a landowner gives a 30 day advance notice (as per Section 4.2.b. in the Cooperative Agreement) that the landowner expects to carry out an activity that is likely to result in the incidental taking of nene, to give the Service the opportunity to work with DOFAW on the rescue of any affected nene.
- n. Inform the Service when Cooperators are not in compliance with the terms and conditions of their Cooperative Agreement and/or Safe Harbor Agreement, and the measures employed to remediate the non-compliance.

5.2.3 Service shall:

- a. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue a permit to DOFAW in accordance with ESA section 10(a)(1)(A) authorizing incidental take of the covered species as a result of lawful activities within the enrolled property. The term of the permit will be 50 years except as otherwise

provided by this Agreement.

- b. Provide technical assistance to DOFAW, to the maximum extent practicable, when requested, and provide information on Federal funding programs that DOFAW can provide to Cooperators.
- c. Ensure DOFAW is implementing the terms of the Agreement.
- d. Assist DOFAW with biological monitoring and management activities as needed.
- e. If warranted, recommend procedures DOFAW can suggest to Cooperators to avoid future take based on any take described in past annual reports.
- f. Work with DOFAW on potential baseline adjustments, new management actions, and adaptive management plans as necessary.
- g. Verify compliance monitoring

6. NET CONSERVATION BENEFIT

The biological goal of this Agreement is to aid in the restoration of nene to the island of Molokai. The Parties reasonably expect this Agreement will result in a population of up to 125 nene on enrolled properties by the time Permits expire. For as long as management activities are carried out, or the habitat they create persists, enrolled lands will benefit the conservation of nene. Without this cooperative government/private effort, the Cooperators' enrolled properties are unlikely to support nene or successful nene reproduction in the foreseeable future. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the authorized take, will provide a net conservation benefit to nene.

Given the uncertainty as to which areas nene will use outside of Puu O Hoku Ranch, this Agreement is necessary to ensure adequate monitoring of nene and to improve the success of any reproductive efforts that do occur outside of Puu O Hoku Ranch. Activities described in this Agreement will increase the probability that nene will expand their range onto lands outside of Puu O Hoku Ranch and the chance that they will survive and reproduce once settled onto those lands. It will also allow adequate monitoring to determine distribution, abundance, and reproductive success of Molokai's nene population. Because one of the main threats to nene is lack of suitable habitat, two goals of the nene recovery plan (USFWS 1999) are to establish cooperative agreements for nene with private landowners and to establish nene populations on islands that do not currently support them, including Molokai. This Agreement will help address these goals through activities that increase the likelihood that a sustainable population will develop on private and public lands on Molokai. The Agreement provides for predator control to benefit nene, thus addressing another key threat to the species. The Agreement will also be an example of a mutually beneficial relationship between government agencies that benefits endangered species and provides evidence that such species can coexist with current land-use practices.

The actions proposed under this Agreement are of limited duration making the Agreement's benefits appear transitory. However, the habitat maintained through commitments within this

Agreement will not necessarily cease to exist upon expiration or termination of the Agreement because Cooperators may not choose to bring enrolled properties back to baseline at that or any other time in the future. If new landowners continue to enroll under this Agreement over an extended period of time, the effect will be to have new land parcels constantly coming under Cooperative Agreements while other Cooperative Agreements expire. The net effect will be a shifting matrix of land being maintained for nene conservation, with a net beneficial impact upon the status quo.

7. AGREEMENT AND PERMIT DURATION

Except as otherwise provided by this Agreement, the Agreement, including the obligations of the Parties and any commitments related to funding, will be in effect for 30 years following the date of its signing by the Parties. The rights to take will hold for the duration of the Federal and State permits. Except as otherwise provided by this Agreement, the Federal permit authorizing incidental take of the covered species will have a duration of 50 years from its effective date, and the State permit authorizing incidental take of the covered species will have a duration of 50 years from its effective date. The Permits extend beyond the life of the Agreement to allow the Cooperators the opportunity to defer take when the Agreement expires, thereby continuing species conservation and extending the net conservation benefit. The Agreement and Permits may be extended beyond their specified durations through amendment, with concurrence of both Parties.

DOFAW may enroll Cooperators under Cooperative Agreements at any time from the date this Agreement is signed until 10 years before it terminates. Obligations under Cooperative Agreements will be in effect variable lengths of time depending on the property covered and the desire of the Cooperator and DOFAW, but the minimum duration of obligations will be for 10 years from the date each Cooperative Agreement is signed. Upon signing of a Cooperative Agreement DOFAW will issue a Certificate of Inclusion to a Cooperator authorizing the incidental take of nene on the Cooperator's lands. The Certificate of Inclusion will authorize incidental take of nene for the remaining duration of the 50-year term of the Permits at the time the Certificate of Inclusion is issued. Incidental take authorization extends beyond the duration of each Cooperative Agreement to allow the Cooperator the opportunity to defer take beyond the expiration of the Cooperative Agreement, thereby promoting nene conservation and extending the net conservation benefit for a longer duration.

The rights and obligations under this Agreement and Cooperative Agreements shall run with the ownership of the enrolled lands, and shall be recorded by DOFAW in the Bureau of Conveyances or the Land Court, as may be appropriate, according to HRS §195D-22(d).

8. LEVEL OF EXPECTED TAKE

Take is defined under the ESA (16 USC §1532(19)) and Hawaii Revised Statutes (HRS §195D-2) as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering (50 CFR 17.3). Incidental take is any take of Federally-listed wildlife or State-listed wildlife and

plants that is incidental to, but not the purpose of, otherwise lawful activities (50 CFR 402.02; HRS §195D-4(g)).

Under the terms of this Agreement, the Cooperators are authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or occupied habitat of nene below the established baseline conditions. The permits will authorize take of nene and their progeny resulting from lawful activities within the enrolled property, from the time this Agreement is signed until expiration of the permits. Such activities may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. The Cooperators may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of nene or loss of occupied habitat in excess of baseline amounts.

In addition to establishing a property's baseline, each Cooperative Agreement will detail the take of above-baseline individuals that is likely to occur. Implementation of this Agreement is expected to result in increased numbers of nene in excess of the enrolled property's established baseline population. No loss of the existing baseline population is authorized by the Certificates of Inclusion issued in conjunction with the Agreement. Thus, the maximum net impact of take authorized under the Safe Harbor program is a return to initially established baseline conditions, which would not adversely impact nene.

9. MONITORING AND ADAPTIVE MANAGEMENT

9.1 COMPLIANCE MONITORING. DOFAW, possibly with the assistance of the Service, may visit enrolled properties to ensure compliance with this agreement, including any obligations of Cooperators under Cooperative Agreements and maintenance of baseline responsibilities.

9.2 BIOLOGICAL MONITORING. When Cooperators report the presence of nene on enrolled lands, or nene are otherwise known to be present DOFAW, possibly with the assistance of the Service, will monitor nene by visiting occupied enrolled lands a minimum of two times (at the beginning and end of the nene breeding season) to ascertain the number of nene present and the success of any nesting attempts.

9.3 ANNUAL REPORT. DOFAW must compile, and the respective Cooperator must assist with the compilation of, an annual report on the implementation of this Agreement. Annual reports will cover the period from July 1st to June 30th each year and are due October 1st of each year. Copies will be made available to the Service, DLNR, and the relevant Cooperator(s). The report will list all of the properties that are enrolled through Cooperative Agreements under this Agreement, the tax map keys for those properties, current ownership, and presence or absence of nene on each property including when that presence or absence was determined. The report will include copies of all Certificates of Inclusion and the associated Cooperative Agreements and any management plans executed during the reporting period. This annual report will include information on the results of biological and compliance monitoring, including, overall status of nene, management activities related to nene, maintenance of baseline conditions, and any incidental take of nene on lands covered by Cooperative Agreements signed under this Agreement. The report will include an estimate of the population size of nene on Molokai and a description of its habitat use on the enrolled properties.

9.4 ADAPTIVE MANAGEMENT. Adaptive management allows for mutually agreed-upon changes to the Agreement's conservation measures in response to changing conditions or new information. If the conservation measures do not yield the expected results and appear ineffective, then management activities can be changed or alternative activities undertaken to achieve those expected results. Decisions related to adaptive management will be based primarily on an evaluation of the compliance and biological monitoring results detailed in the annual reports.

Adaptive management decisions can be made at any time as deemed necessary by DOFAW and the Service, however, a major evaluation of this Agreement will be carried out after the fifth annual report is submitted, to ensure that it is achieving its conservation goals. Management activities will be evaluated as to whether they are resulting in the protection of nene and their eggs and young from predators on enrolled lands. If nene are attempting to breed, but no successful reproduction has occurred within the first five years of this Agreement the Parties will change management activities to improve breeding success. This will most likely be brought about through a change in the predator control program, possibly including greater effort on the part on DOFAW staff in carrying out the control program. The evaluation will also include an assessment of incidental take that has occurred to determine if high levels of ongoing take may be preventing recovery of nene on Molokai. If nene have failed to establish outside of Puu O Hoku Ranch within the first five years of this Agreement because dispersing birds do not survive, the Parties will find ways to change management actions to result in an increase in nene survival rates. If nene are not dispersing from Puu O Hoku Ranch then the Parties may consider setting up additional release facilities on other enrolled properties on Molokai.

If management activities need to be altered to improve benefits for the species, they will be altered by amending future Cooperative Agreements, not by altering the responsibilities of parties in existing Cooperative Agreements. However, if existing Cooperators agree to alter their Cooperative Agreements then any modification of their responsibilities in relation to adaptive management will be addressed on a case by case basis.

10. FUNDING

The responsibilities of DOFAW under this Agreement, to monitor enrolled properties and carry out biological monitoring of nene and to potentially carry out some predator control and relocation of nene, will be funded by DOFAW using existing grants, State of Hawaii General Fund LNR 402 Appropriations or new federal grants. The responsibilities of the Service under this Agreement will be funded by the Service. DOFAW's and the Service's responsibilities under this Agreement are subject to, and contingent upon, appropriations and allocations of funds for this purpose. Management activities undertaken by Cooperators will be paid for by the Cooperators undertaking those activities.

11. MODIFICATIONS

After execution of this Agreement, the Service and DLNR may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5), and HRS §195D-23(a).

11.1. MODIFICATION OF THE AGREEMENT. This Agreement may be modified to accommodate changed circumstances as provided by 50 CFR 13.23 and HRS §195D-23. Any Party may propose modifications or amendments to this Agreement by providing written notice to the other Parties and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other Parties' written concurrence. Any modifications to this Agreement will not affect Cooperator's responsibilities under existing Cooperative Agreements.

11.2. AMENDMENT OF THE PERMITS. The permits may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, the Service's permit regulations at 50 CFR 13 and 50 CFR 17, and the State of Hawaii's regulations at HRS §195D-23. Any Party may propose amendments to the Permits by providing written notice to the other Parties. Such notice shall include a statement of the proposed amendment, the reason for it, and its expected results. The Parties will make their best efforts to respond to proposed modifications within 90 calendar days of receiving the notice. Proposed amendments will become effective upon fulfillment of the legal requirements stated above. Any amendments to the Agreement will not affect Cooperator's responsibilities under existing Cooperative Agreements.

11.3. MODIFICATION OF COOPERATIVE AGREEMENTS. DOFAW or a Cooperator may propose modifications or amendments to a Cooperative Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties to a Cooperative Agreement will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other party's written concurrence.

11.4. TERMINATION OF THE AGREEMENT. DOFAW will not terminate this Agreement before its expiration 30 years following approval. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), Cooperators may terminate implementation of their Cooperative Agreements for circumstances beyond the Cooperator's control. In such instances, Cooperators will provide 90 calendar days' prior written notice to DOFAW, who will notify the Service. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained. Cooperators must provide DOFAW the opportunity to relocate nene, possibly with the assistance of the Service, within 60 calendar days of receiving that notice. The Cooperator also may terminate his/her Cooperative Agreement at any time for any other reason, but termination for reasons other than uncontrollable circumstances shall extinguish the Cooperator's permission to take nene, and the Cooperator must relinquish his/her Certificate of Inclusion to DOFAW.

11.5. PERMIT SUSPENSION OR REVOCATION. The Service may suspend or revoke the Federal permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the Federal permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR

13.28(a)). Prior to revocation, the Service will exercise all possible measures to remedy the situation. The Board of Land and Natural Resources may suspend or revoke the State permit for cause pursuant to HRS §195D-22(c).

11.6. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. The Board of Land and Natural Resources may suspend or revoke a Cooperator's Certificate of Inclusion if a Cooperator has breached his/her obligations under a Cooperative Agreement and has failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the Cooperative Agreement will achieve its stated goals.

11.7. REMEDIES. Each party shall have all remedies otherwise available to enforce the terms of the Agreement and permits, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement, or any other cause of action arising from this Agreement.

11.8. DISPUTE RESOLUTION. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

12. ADDITIONAL MEASURES

12.1. SUCCESSION AND TRANSFER. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, in accordance with applicable Federal regulations (50 CFR 13.24 and 13.25). The rights and obligations under this Agreement and any Cooperative Agreements shall run with the ownership of the enrolled properties and are transferable to subsequent private property owners pursuant to 50 CFR 13.25 and HRS §195D-22(d). A Certificate of Inclusion issued to a Cooperator also will be extended to the new owner. The Cooperator shall notify DOFAW and DOFAW will inform the Service of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that DOFAW can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and explain the terms and conditions of the Cooperative Agreement. By becoming a party to the original agreement and permit, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner at the original baseline.

12.2. AVAILABILITY OF FUNDS. Implementation of this Agreement is subject to the requirements of the Federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service and DOFAW will not be required under this Agreement to expend any Federal or State agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

12.3. RELATIONSHIP TO OTHER AGREEMENTS. This Agreement is intended to complement the "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai" that became effective on September 4, 2001, and is in effect for 7 years after that time.

12.4. NO THIRD-PARTY BENEFICIARIES. This Agreement does not create any new right or

interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for injuries, damages, injunctive or other relief pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

12.5. NOTICES AND REPORTS. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate. Names and addresses may be changed upon written notification to all parties.

[Cooperators indicated on Cooperative Agreements]

Field Supervisor
Pacific Islands Fish and Wildlife Office
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 3-122
P.O. Box 50088
Honolulu, Hawaii 96850

Wildlife Program Manager
Hawaii Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street
Honolulu, Hawaii 96813

Administrator
Hawaii Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street
Honolulu, Hawaii 96813

13. REFERENCES CITED

- Baldwin, P.H. 1945. The Hawaiian goose, its distribution and reduction in numbers. *Condor* 47: 27-37.
- Baldwin, P.H. 1947. Foods of the Hawaiian goose. *Condor* 49: 108-120.
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- Banko, W.E. and W.H. Elder. 1990. History of endemic Hawaiian birds. Population histories-species accounts: scrub-grassland birds: Nene-Hawaiian Goose. Avian History Report 13A. Cooperative National Park Resources Studies Unit, University of Hawaii, Manoa, Honolulu.

- Black, J.M. 1998. Threatened waterfowl: recovery priorities and reintroduction potential with special reference to the Hawaiian Goose. Pp. 125-140 in *Avian conservation: research and management* (J.M. Marzluff and R. Sallabanks, eds.). Washington, D.C.: Island Press.
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- Perkins, R.C.L. 1903. Vertebrata. Pp. 365-466 in *Fauna Hawaiiensis*, Vol. 1, part 4 (ed. D. Sharp). Cambridge, England: The Univ. Press.
- Quinn, T. W., G.F. Shields, and A.C. Wilson. 1991. Affinities of the Hawaiian goose based on two types of mitochondrial DNA data. *Auk* 108: 585-593.
- Smith, J.D. 1952. The Hawaiian goose (nene) restoration program. *Journal of Wildlife Management* 16: 1-19.
- U.S. Fish and Wildlife Service. 1999. *Draft Revised Recovery Plan for Nene or Hawaiian Goose (Branta sandvicensis)*. U.S. Fish and Wildlife Service, Portland, OR. 60 pp.
- Wilson, S.B. and A.H. Evans. 1893. *Aves Hawaiiensis: the birds of the Sandwich Islands*. London: R.H. Porter.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date last signed below.

Chairperson
Board of Land and Natural Resources
Hawaii Department of Land and Natural Resources

Date

Administrator
Division of Forestry and Wildlife
Hawaii Department of Land and Natural Resources

Date

Deputy Regional Director
U.S. Fish and Wildlife Service
Portland, Oregon

Date

APPROVED AS TO FORM

Deputy Attorney General
State of Hawaii

LIST OF ATTACHMENTS

Attachment 1. Map of the Island of Moloka'i and overview of major landowners

Attachment 2. Map of the Island of Moloka'i and distribution of principle habitats that may be used by nene.

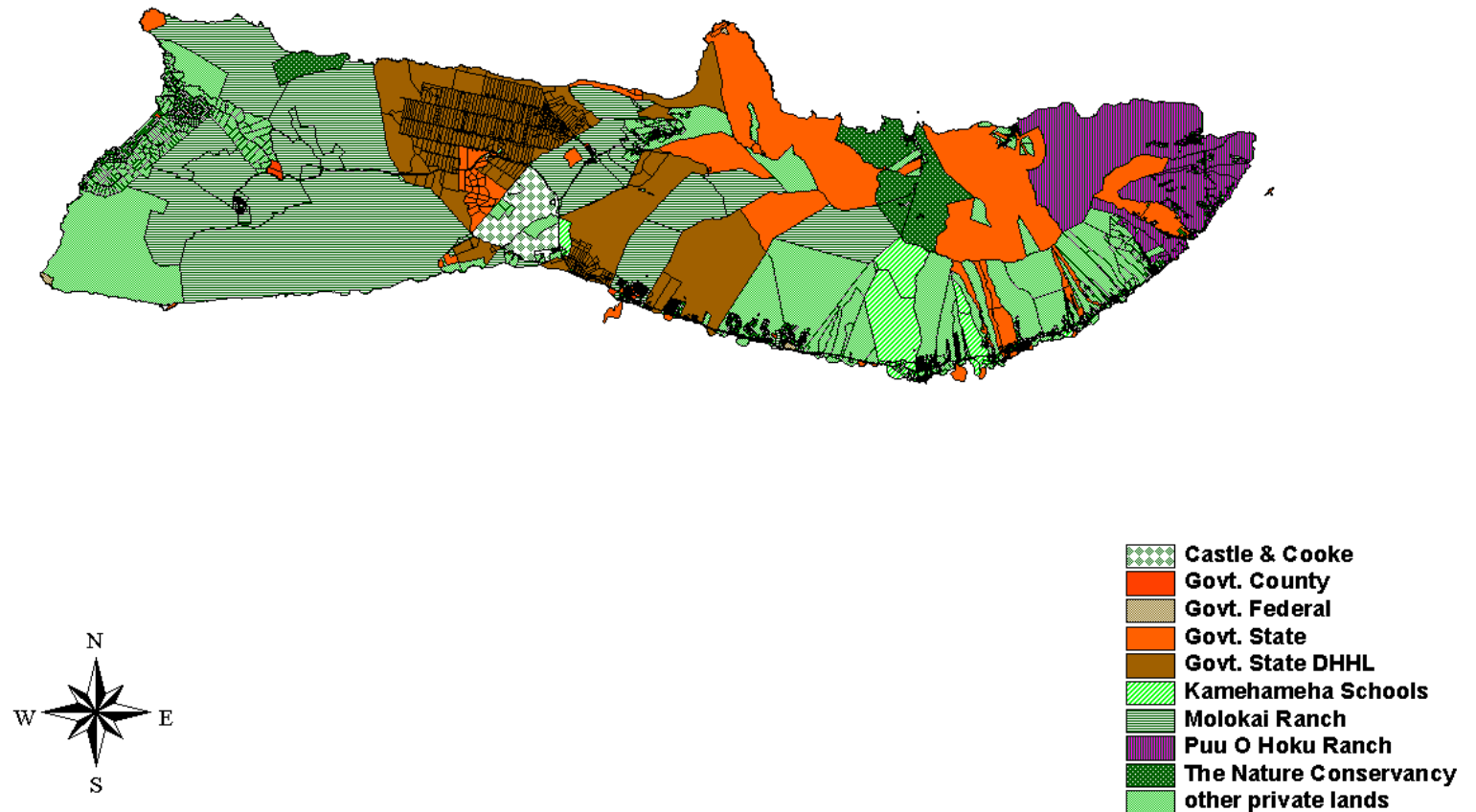
Attachment 3. Cooperative Agreement template.

Attachment 4. Safe Harbor Agreement Certificate of Inclusion template.

Attachment 5. Guidelines for handling injured or ill nene and nene carcasses

Attachment 1. Map of the Island of Moloka'i and overview of major landowners. (Puu O Hoku Ranch occupies parcels on the eastern end of the island.)

Land Ownership on Molokai



Attachment 2. Map of the Island of Moloka'i and distribution of principle habitats that may be used by nene. Nene may use all habitats except dense forest or densely settled urban areas

Principal Habitat Types on the Island of Molokai



COOPERATIVE AGREEMENT TEMPLATE

1. INVOLVED PARTIES.

This Cooperative Agreement, between the Department of Land and Natural Resources' Division of Forestry and Wildlife (DOFAW) and _____ (Cooperator), is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit nene or Hawaiian goose (*Branta sandvicensis*) on land owned by the Cooperator. Participation in this Cooperative Agreement is a prerequisite for obtaining a Certificate of Inclusion [reference attachment to this Cooperative Agreement] from DOFAW issued as part of the agreement between DOFAW, the Department of Land and Natural Resources (DLNR) and the U.S. Fish and Wildlife Service (Service) titled, "Programmatic Safe Harbor Agreement for Nene on the Island of Molokai, Hawaii" (Agreement).

Safe Harbor Agreements do not release landowners from the responsibility to avoid "taking" any endangered species that already occupy portions of the property.

2. ENROLLED PROPERTY.

The Cooperator owns property at [tax map key information] in Maui County, Hawaii, that contains habitat that may be used by nene. DOFAW will enroll [# of acres] of this property under the Agreement, as shown on the attached property map [reference map attached to this Cooperative Agreement]. Other species of listed plants or animals may also occur on the property, but no incidental take of these other species is authorized or permitted under this Cooperative Agreement.

3. BASELINE RESPONSIBILITIES.

[Describe the extent and current condition of the enrolled lands and their acreage (e.g., major plant communities or habitat types, soils, hydrology, etc.) in terms appropriate for nene. Describe how the baseline was determined and attach a map showing the boundaries of the property and areas of potential nene habitat. A species baseline may be expressed either as a population estimate or distribution (number and location, if determinable). Existing suitable habitat must be able to sustain seasonal or permanent use by nene at the time the Cooperative Agreement is executed.]

The baseline for this property is set at [n] nene and [n] acres of nene habitat, the boundaries of which are shown on the attached map ([reference map attached to this Cooperative Agreement]).

Force majeure events such as hurricanes, rainstorms, severe drought, fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate nene from enrolled lands or render nene habitat on enrolled lands unsuitable for continued occupation. These events may reduce nene numbers or habitat below original baseline conditions through no fault of or negligence of the Cooperator. In such circumstances the Cooperator, DOFAW, and the Service may agree to revise the Cooperative Agreement's baseline conditions to reflect the new circumstances.

4. CONSERVATION MEASURES AND RESPONSIBILITIES OF THE PARTIES

4.1 CONSERVATION MEASURES. The primary objective of this Agreement is to aid in the restoration of a population of nene on Molokai that is self-sustaining. In order to accomplish this, it is essential that private landowners, the Service, and DOFAW work together to provide good habitat and positive stewardship for nene. Management activities that are undertaken through Cooperative Agreements will result in additional habitat being available to the nene of Puu O Hoku Ranch, should nene choose to leave Puu O Hoku Ranch. Until such a time as a Cooperator or DOFAW discovers or expects that nene occur on a property the Cooperator will have no responsibilities under this Agreement except to report the absence of nene to DOFAW on an annual basis.

If a Cooperator discovers nene on his/her property or believes nene to be present, the landowner will inform DOFAW of the nene's presence within a reasonable amount of time. The Cooperator will also allow DOFAW, possibly with the assistance of the Service, to access the property to survey nene. DOFAW, in consultation with the Service, may choose, under certain circumstances, to relocate eggs, goslings, or adults to other portions of the property, or to remove them from the property. Predator control will be carried out in areas where nene are nesting and will be carried out by the landowner and/or DOFAW as specified in Section 4.2 below in areas where nene are nesting. The net effect of these management activities will be to increase the likelihood that nene on Molokai will survive and breed successfully. Specific management actions that will be implemented once nene colonize a Cooperator's property are detailed under Section 4.2. Responsibility of Parties.

Nothing in this Agreement prevents the Cooperator from implementing land management activities not described in the Agreement, including improving habitat for nene, as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. As long as the Cooperator implements the agreed upon conservation measures the Cooperator may develop, farm, ranch, harvest timber, or make any other lawful use of the enrolled property, even if loss of nene or occupied habitat above the established baseline levels occurs.

Emergency situations arising from natural disasters (e.g., hurricanes, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of certain land management actions that may result in take of nene. The Cooperator will notify DOFAW and make reasonable accommodations for survey and/or relocation of nene, possibly with the assistance of the Service, prior to initiation of the land management action in such an event. If prior notification is not possible, the Cooperator will take into account known locations of nene, especially nests, and avoid impacts to the maximum extent possible during his/her emergency actions. The Cooperator will notify DOFAW within 10 working days of taking such action, including the measures taken to avoid impacts to nene.

4.2 RESPONSIBILITIES OF THE PARTIES. The Cooperator and DOFAW agree to carry out certain responsibilities under this Cooperative Agreement. The Cooperator understands that in order to fulfill the responsibilities of the Safe Harbor Agreement, DOFAW must report to the Service all implementation and monitoring activities related to nene management in accordance with the Safe Harbor Agreement.

Cooperator:

- a. Within 30 days, inform DOFAW when nene are known or suspected to be present on his/her enrolled lands.
- b. If nene are known to be present or nesting on the enrolled lands during the nene breeding season (approximately October through March), notify DOFAW 30 days in advance of any planned land management activity (mowing, plowing, etc.) that the Cooperator reasonably anticipates will result in the incidental take of nene adults, goslings, or eggs; and provide DOFAW, possibly with the assistance of the Service, the opportunity to capture and/or relocate any potentially affected nene. In no circumstances shall the Cooperator disturb nene nests until after the birds have hatched their eggs and left the nest with their young.
- c. Inform DOFAW within three working days of finding any dead or accidentally killed nene.
- d. With acceptable advance notification, allow access to the enrolled lands by DOFAW, possibly with the assistance of the Service, to manage or monitor (including banding) nene, relocate nene eggs, goslings and/or adults, or to carry out additional predator control if necessary.
- e. If nene are known to be present on the enrolled property attempt to control feral dogs to reduce the threat that dogs pose to nene. [Describe extent of control efforts here].
- f. If nene are known to be breeding on the enrolled property, attempt to control predators to reduce the threat of dog, cat, or mongoose depredation on nene, their eggs, and nestlings. [Describe extent of control efforts here].
- g. Assist DOFAW in compiling an annual report on activities related to nene management and any activities that resulted in or may have resulted in incidental take of nene.
- h. With acceptable advance notification, allow access to the enrolled lands by DOFAW, possibly with the assistance of the Service, for purposes of ascertaining compliance with this Cooperative Agreement.
- i. Follow guidelines provided by DOFAW for handling injured nene or carcasses of nene.
- j. Refrain from feeding nene on enrolled lands.
- k. Agree to consider adaptive management recommendations that DOFAW may present to the Cooperator.
- l. If considering improving habitat for nene, seek technical assistance from DOFAW on appropriate action.

DOFAW:

- a. Upon execution of a Cooperative Agreement authorize incidental take of nene as a result of lawful activities within the enrolled property for the term remaining on the Federal and State permits through issuance of a Certificate of Inclusion to the Cooperator under those permits.
- b. Provide technical assistance to the Cooperator to the maximum extent practicable, when requested.
- c. Ensure the Cooperator is implementing the terms of the Cooperative Agreement.
- d. If nene are known or are believed to be present on the enrolled property visit the property to determine the number and status of nene present. Provide technical expertise on predator control methods and implementation.
- e. If nene are known or believed to be present on the enrolled property, visit the property to

determine whether adult and/or gosling nene and/or fertile eggs should remain on the property or be relocated.

- f. Carry out additional predator control on the enrolled property to supplement predator control already being carried out by the Cooperator if such efforts become necessary to ensure the success of nene breeding efforts.
- g. Provide sufficient advance notification to the Cooperator before any visit by DOFAW and/or Service staff to the enrolled property.
- h. Compile an annual report with assistance from the Cooperator on activities required by this Agreement and/or related to nene management and any activities that resulted in or may have resulted in incidental take of nene.
- i. Perform biological monitoring of nene, unless conducted by the Cooperator.
- j. If warranted, recommend procedures the Cooperator can take to avoid future incidental take based on incidental take described in past annual reports.

5. AGREEMENT DURATION.

Obligations under this Cooperative Agreement will be in effect for 10 years from the date it is executed. Upon signing of the Cooperative Agreement, DOFAW will issue a Certificate of Inclusion to the Cooperator under the state incidental take permit [permit reference number] and federal permit [permit reference number] DOFAW holds, authorizing the incidental take of nene on the enrolled lands. The Certificate of Inclusion will authorize incidental take of nene from [date] to [date], the remaining duration of the 50-year term of the permits at the time the Certificate of Inclusion is issued. This Cooperative Agreement, the Certificate of Inclusion, and copies of the state and federal incidental take permits will be recorded by DOFAW in the Bureau of Conveyances or the land court, as may be appropriate.

6. INCIDENTAL TAKE.

Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of Federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities.

Under the terms of this Cooperative Agreement, the Cooperator is authorized to make use of his/her enrolled property in any manner that does not result in reducing the population and/or occupied habitat of nene below the established baseline conditions. The Certificate of Inclusion will authorize incidental take of nene and their progeny resulting from lawful activities within the enrolled property, from the time this Cooperative Agreement is signed until expiration of the permits. Such uses may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. The Cooperator may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of nene or loss of occupied habitat in excess of baseline amounts.

[Describe level of take that may potentially occur on the enrolled property based on property

acreage, habitat types, and current distribution and population status of nene.]

Nene eggs, goslings, or adults may not be shot, captured, collected, or otherwise directly “taken.”

7. FUNDING.

Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. DOFAW will inform the Cooperator of potential funding opportunities through State or Federal grant programs that may be relevant.

8. TERMS AND CONDITIONS.

This Cooperative Agreement is subject to all the terms and conditions laid out in the Programmatic Safe Harbor Agreement for Nene on the Island of Molokai, Hawaii. It is also subject to the additional terms and conditions:

8.1. MODIFICATION OF COOPERATIVE AGREEMENTS. DOFAW or the Cooperator may propose modifications or amendments to a Cooperative Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other Party's written concurrence.

8.2. TERMINATION OF THE COOPERATIVE AGREEMENT. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), Cooperators may terminate implementation of their Cooperative Agreements before their expiration date for circumstances beyond the Cooperator's control. In such instances, Cooperators will provide 90 calendar days' prior written notice to DOFAW, who will notify the Service. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained and as long as agreed upon conservation measures were implemented. Cooperators must provide DOFAW the opportunity to relocate nene, possibly with the assistance of the Service, within 60 calendar days of receiving that notice. The Cooperator also may terminate his/her Cooperative Agreement at any time for any other reason, but termination for reasons other than uncontrollable circumstances shall extinguish the Cooperator's permission to take nene, and the Cooperator must relinquish his/her Certificate of Inclusion to DOFAW.

8.3. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. The Board of Land and Natural Resources may suspend or revoke a Cooperator's Certificate of Inclusion if a Cooperator has breached his/her obligations under a Cooperative Agreement and has failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the Cooperative Agreement will achieve its goals.

8.4. SUCCESSION AND TRANSFER. The rights and obligations under this Cooperative Agreement shall run with the ownership of the enrolled property and are transferable to subsequent private property owners pursuant to 50 CFR 13.25 and HRS §195D-22(d). The Certificate of Inclusion issued to the Cooperator will be extended to the new owner. By

becoming a party to the original Cooperative Agreement and permit, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner at the original baseline. The Cooperator shall notify DOFAW of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that DOFAW can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Cooperative Agreement or a new one to benefit nene on the property.

8.5. REMEDIES. Each party shall have all remedies otherwise available to enforce the terms of the Cooperative Agreement and the Certificate of Inclusion, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Cooperative Agreement or any other cause of action arising from this Cooperative Agreement.

9. NOTIFICATION.

Communication and correspondence required by this Cooperative Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

[name and address of Cooperator]

Randolph Manaba
Hawaii Department of Land and Natural Resources
Division of Forestry and Wildlife
P. O. Box 347
Kaunakakai, Hawaii 96748
(808) 553-1745

Wildlife Program Manager
Hawaii Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street
Honolulu, Hawaii 96813
(808) 587-4176

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

COOPERATOR

By: _____

Date: _____

HAWAI'I DEPARTMENT OF LAND &
NATURAL RESOURCES' DIVISION OF
FORESTRY AND WILDLIFE

By: _____

Administrator
Division of Forestry and Wildlife

Date: _____

Safe Harbor Agreement Certificate of Inclusion Template

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [description of portion of property covered by the Safe Harbor Permit] owned by [Cooperator's name], is included within the scope of the Section 10(a)(1)(A) permit issued by the U.S. Fish and Wildlife Service expiring on [date] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended [reference number] and the incidental take permit issued by the Division of Land and Natural Resources (DOFAW) on [date] expiring on [date] under the authority of HRS§195D sections 4 and 22 [reference number]. The Permits authorize certain activities by the [Cooperator] as part of the Safe Harbor program to restore a population of nene to the Island of Molokai. The holder of this Certificate is authorized to engage in any otherwise lawful activity on the above described property that may result in the incidental taking of nene or their habitat above baseline subject to the terms and conditions of the Permits. This Certificate is only valid as long as the Cooperator fulfills their responsibilities as described in the Cooperative Agreement [reference number] entered into by DOFAW and [Cooperator's name] on [date].

Administrator
Division of Forestry and Wildlife

Date: _____

Attachment 5. Guidelines for Handling Injured or Ill Nene and Nene Carcasses

The purpose of these guidelines is to provide Cooperators (landowners) and their personnel with sufficient information to correctly determine the disposition of injured or ill nene and nene carcasses that are encountered on lands owned by Cooperators and covered through Cooperative Agreements by the "Programmatic Safe Harbor Agreement for Nene on the island of Molokai, Hawaii."

A. Criteria for Handling Injured or Ill Nene

1. See if the bird can fly. If the bird can fly, do not remove from the field. Report incident to Division of Forestry and Wildlife (DOFAW) personnel as soon as possible. Continue to monitor bird if possible. Record the following information:
 - Date
 - Location
 - Banded/Unbanded (If banded, record band number if possible)
 - Condition of bird, *e.g.* type of injury
 - Additional comments
2. If the injured or ill bird cannot fly, do the following:
 - a. Notify Randolph Manaba or Tony Ledesma (Molokai DOFAW) at 553-1745 as soon as possible. If they are not available, contact John Medeiros at 873-3510 (Maui DOFAW).
 - b. Mark area and monitor nene if possible until DOFAW personnel arrive.
3. Injured nene may only be captured by personnel who have been trained in the capture and collection of live nene and only after approval is received from DOFAW personnel.

B. Criteria for Collecting Nene Carcasses

1. All nene carcasses will be collected for necropsy in order to determine cause of death, where possible, and to provide information about general movements.
2. If a nene is found dead and determined to be fresh (less than 48 hours), put the dead bird in a sealed plastic bag and place in refrigerator or on ice and contact Randolph Manaba or (Molokai DOFAW; 553-1745) or John Medeiros (Maui DOFAW; 873-3510). If unable to contact these personnel within 48 hours, place the bird in a sealed plastic bag in a freezer. Birds will be collected by DOFAW personnel and submitted for necropsy.
3. If the bird is obviously in a state of decay, place the bird in a sealed plastic bag in a freezer and notify DOFAW personnel as soon as possible. Birds will be collected by DOFAW personnel and submitted for necropsy.
4. Record the following information for dead nene as well:
 - Date
 - Location
 - Banded/Unbanded (If banded, record band number if possible)
 - Condition of bird
 - Additional comments